



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.205 OF 2015

NAHID TABASUM.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By Notice of Motion dated 31st August, 2015 brought pursuant to **Sections 362 and 365 of the Criminal Procedure Code** the Applicant herein prays that the ruling of the Chief Magistrate's Court Nairobi in Cr. Case No. 2217 of 2009 delivered by Hon. Daniel Ogembo Chief Magistrate be set aside. On granting the order, the Applicant requests that her passports deposited with the trial court be returned to her to enable her travel out of the country for medical treatment. The ruling of the trial court was pursuant to a similar application dated 3rd July, 2015 by the Applicant to have her passport released to her for purposes of travelling out of the country to seek medical treatment. In his ruling, the learned trial magistrate observed that the Applicant was a flight risk and accordingly dismissed the application. In that application, the Applicant outlined the reasons why she thought she needed medical attention out of the country. She stated that she was diagnosed with a well circumscribed oval mass within the superficial lobe of the left parotid gland and that the doctor had recommended for a surgeon who would do a parotidectomy preferably in Cape Town or in India.

I have noted from the annexures to the application that the application of 3rd July, 2015 was not the first that the Applicant had made of this nature. There is a ruling dated 17th December, 2014 by Hon. Hannah N. Ndungu, Chief Magistrate declining a similar prayer. She noted that the purpose for which the accused persons' passports had been deposited in court was to prevent them from leaving the court's jurisdiction in view of the weight of the charges facing them. At that time, the accused persons wanted to travel out of the country for some festive seasons. A look at the charge sheet shows that the Applicant together with three others were charged with various counts. In her respect, her offences ranged from being in possession of ammunitions namely; 55,200 live ammunitions of calibre 9 mm, 1300 live ammunitions of 7.62 mm calibre, 640 live ammunition of 308 calibre, 10,000 live ammunition of .22 calibre and 349 live ammunitions of 12 gauge without a valid firearms certificate; being in possession of unauthorized explosives namely; 16 mini flares and 3 thunder flash; stealing contrary to Section 375 of the Penal Code and two counts of handling stolen properties contrary to Section 322(2) of the Penal Code.

I have looked at the medical record annexed to the application that was dismissed by the learned magistrate. I empathize with the Applicant due to her ill health. Unfortunately, the circumstances of this case do not favour the request made before this court. Her passport was confiscated by the court specifically so as to enable her not to leave the jurisdiction of the court. I bear in mind that the offences

facing the Applicant are of grave nature and should she be convicted, the penalties attendant thereto are very heavy. These are compelling reasons why this application should not be granted. By no means then she would have all manner of reasons to advance that would enable her not to attend the trial. There is no guarantee that once she left the country, she would return to continue with the trial. The nature of her illness, I believe, can still be handled locally notwithstanding the recommendations of the doctors that the Applicant should seek medical attention out of the country. In lieu thereof, the best that the trial could do is to hear the matter on a priority and on a day to day basis. That request can be made by the defence counsel to the court. I accordingly rule that the learned trial magistrate did not misdirect his mind in finding that the Applicant is a flight risk and releasing the passport would do more harm than good to the trial. I accordingly dismiss the application.

DATED and DELIVERED this 9th day of May, 2016

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

No appearance for the Applicant

Miss Akinyi for the Respondent.